IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Mark D. Ackerman et al.	Examiner: Behrang Badii
Serial No.:	09/973,664	Group Art Unit: 3694
Filed:	October 9, 2001	Docket: 1565.039US1
Title:	SYSTEM AND METHOD FOR CONTROLLING ACCESS TO LICENSED	
	COMPUTING PROCESSES VIA A CODIFIED ELECTRONIC LICENSE	

REPLY BRIEF UNDER 37 C.F.R. § 41.41

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANT'S REPLY BRIEF

This Reply Brief is filed in response to the Examiner's Answer (hereinafter, the "Answer"), mailed July 10, 2008, and supplements the Appeal Brief filed by the Appellant on April 14, 2008, as well as the Response to Notice of Non-Compliant Appeal Brief filed on April 22, 2008. Please charge any required additional fees or credit overpayments to Deposit Account 19-0743.

Argument

The Appellant has reviewed the Answer, and believes the statements in the Appeal Brief remain accurate and compelling. In responding to the Answer, the Appellant would like to further explore a selected few of the points raised by the Office.

Initially, Applicant notes for the Board that the Section 112 references have now been withdrawn by the Examiner. Thus, these rejections and Applicant's arguments in contradiction thereto are now moot points and are no longer before the Board. What remains is the rejections with respect to Section 103(a) only.

So, with respect to the Section 103 rejections, Applicant further states the following:

Firstly, Applicant does not believe that it if it is not permissible for the Applicant to enter new evidence in the Appeal Brief that was not submitted during prosecution then correspondingly it is not permissible for the Examiner to enter such evidence in the Answer to the Appeal Brief. It appears that the Examiner has done just that with the introduction of the "Java hot to program" reference. Applicant respectfully requests that this text and reference be given not weight in determining the issues raised on this appeal because its admission at this

stage of Appeal is inappropriate.

Secondly, the exclusion identifiers are not recited in the claims as a generic exclusion identifier, which the Examiner asserts in referencing "Clements (*sic*)" that uses exclusion of data strings.   This is not an exclusion identifier to exclude specific commands of a software product. The Examiner has only partially cited that passage for the Board to review in the Answer.   The entire passage of Clement at column line lines 50-54 is as follows: "Preferably the search can be conducted using key work (sic) [this should have been 'word'] techniques, including inclusion or exclusion of specific data strings, or by a unique procedure identifier indentifying a procedure or sub procedure of a procedure." The comma following data strings in this sentence indicates an alternative approach using identifiers for procedures, this clause is not associated with the exclusion mentioned in the first part of the sentence.   Moreover, a complete reading of Clement makes this point very clear, searching in Clement excludes data strings using a Boolean "AND NOT" operation in the search.   There is no ability to exclude specific commands of a software product in Clement whatsoever.   So, Applicant respectfully believes that the recitation of that passage in partial form is misleading and not what the Examiner asserts it to be to the Board.

Thirdly, Clement is about database searching techniques to produce on-the-job performance support, Clement is not about the ability to exclude specific operations of a software product.   Again, generic exclusions are not sufficient to render what Applicant has claimed as being obvious because Applicant has claimed a very specific exclusion identifier that entails excluding specific operations of a software product.

Throughout prosecution the Examiner has been unable to demonstrate this via any reference and prosecution in this case is lengthy and robust, the Examiner has amble opportunity to locate such a reference if one in fact existed and has elected to just rely on generic exclusions, which are not what Applicant has claimed in this invention.

Accordingly for all the reasons stated in the original Appeal Brief and for the additional reasons stated herein, the rejections should be withdrawn and the claims of record allowed. Applicant respectfully requests an indication of the same from the Board.
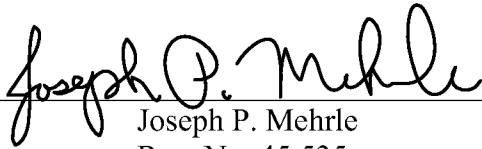
Conclusion

In summary, for the reasons set forth above and in the Appeal Brief, the claims have been improperly rejected. Therefore, the Appellant respectfully requests that these rejections be reversed, with allowance of the pending claims.

The Appellant submits that all of the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Appellant's attorney at (513) 942-0224 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(513) 942-0224

By /   /
              Joseph P. Mehrle
              Reg. No. 45,535